

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

HEADWATER RESEARCH LLC,

Plaintiff,

v.

AT&T SERVICES, INC., AT&T
MOBILITY, LLC, and AT&T CORP.,

Defendants.

Civil Action No. 2:23-cv-00397-JRG-RSP

(Lead Case)

JURY TRIAL DEMANDED

HEADWATER RESEARCH LLC,

Plaintiff,

v.

AT&T SERVICES, INC., AT&T
MOBILITY, LLC, and AT&T CORP.,

Defendants.

Civil Action No. 2:23-cv-00398-JRG-RSP

(Member Case)

JURY TRIAL DEMANDED

**NOTICE OF SUPPLEMENTAL AUTHORITY REGARDING
HEADWATER'S MOTION TO DISQUALIFY MCKOOL SMITH
AS COUNSEL FOR DEFENDANTS (DKT. 44)**

Plaintiff Headwater Research LLC submits this notice of supplemental authority regarding its pending motion to disqualify (Dkt. 44) McKool Smith as counsel for Defendants AT&T Services, Inc., AT&T Mobility, LLC and AT&T Corp. (collectively, “AT&T”).

A key issue presented in the motion to disqualify is whether Headwater and Interdigital, Inc. (who McKool Smith represented in discussions about purchasing Headwater’s patents, including the patents-in-suit) shared a common legal interest. In opposing Headwater’s motion, AT&T argued that Headwater and Interdigital did not have a common legal interest because they were “never co-parties in actual or potential litigation; they were counterparties in a potential commercial transaction.” Dkt. 47 (AT&T Opp’n) at 1, 9–12. AT&T also argued that the common interest provision in the Interdigital NDA did not establish a common interest privilege between Headwater and Interdigital because “the Headwater-Interdigital negotiations were in furtherance of a business relationship—not litigation.” *Id.* at 11; Dkt. 51 (AT&T Sur-reply) at 1–4.

Judge Payne recently analyzed the same issue—whether Headwater and Interdigital shared a common legal interest—and concluded that they did. On April 25, 2024, Judge Payne issued a memorandum order finding that “a sufficient common legal interest exists between Headwater and InterDigital.” *Headwater Research LLC v. Samsung Electronics Co. Ltd.*, No. 22-CV-00422-JRG-RSP, Dkt. 198 (attached as Ex. A) at 2. Judge Payne further found that “InterDigital as a potential acquirer of Headwater’s patents for the purpose of asserting them, has a common interest with Headwater as to the validity and enforceability of the patents.” *Id.* As a result, Judge Payne denied Samsung’s motion to compel communications between Headwater and InterDigital regarding the proposed transaction as protected by the common interest privilege. *Id.*

In view of Judge Payne’s findings, and for the reasons in Headwater’s opening and reply briefs, Headwater’s motion to disqualify McKool Smith as counsel should be granted.

Dated: May 22, 2024

Respectfully submitted,

/s/ Brian Ledahl

Marc Fenster

CA State Bar No. 181067

Reza Mirzaie

CA State Bar No. 246953

Brian Ledahl

CA State Bar No. 186579

Ben Wang

CA State Bar No. 228712

Dale Chang

CA State Bar No. 248657

Paul Kroeger

CA State Bar No. 229074

Neil A. Rubin

CA State Bar No. 250761

Kristopher Davis

CA State Bar No. 329627

James S. Tsuei

CA State Bar No. 285530

Philip Wang

CA State Bar No. 262239

Amy Hayden

CA State Bar No. 287026

Jason M. Wietholter

CA State Bar No. 337139

RUSS AUGUST & KABAT

12424 Wilshire Blvd. 12th Floor

Los Angeles, CA 90025

Telephone: 310-826-7474

Attorneys for Plaintiff

Headwater Research LLC

CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2024, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF System per Local Rule CV-5(a)(3).

/s/ Brian Ledahl
Brian Ledahl